HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO. 5400 OF 1997

Between:

Y. Dayanand

… Petitioner

and

The A.P. State Housing Corporation
Limited and others

…

Respondents

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO.5400 OF 1997

ORAL ORDER:

The petitioner, a physically handicapped from the Scheduled Caste Community, was appointed on his name being sponsored by the employment exchange, as an attender-cum-watchman. He was initially appointed for 89 days on a consolidated salary for Rs.700/- per month and was continued thereafter without any break. According to the petitioner, despite there being a regular vacancy available, he had not been paid the regular scale of pay and that, persons similarly situated had filed W.P.No.10651 of 1996 and this court had passed an interim order directing the respondents to pay regular scales of pay attached to the post of Works Inspector (technical). The petitioner seeks a declaration from this court that he is entitled to be regularized with regular scale of pay attached to the post from the date when he was originally appointed after selection against a reserved vacancy, with all consequential benefits.

In the counter affidavit filed, on behalf of the respondents, it is stated that the petitioner was temporarily appointed as a day watchman-cum-attender on a consolidated pay of Rs.700/- per month and was posted to “Nirmitha Kendra”, Gachibowli, and that in the appointment order, it is specifically stated that the appointment was purely temporary. It is stated that the allegation that he was continued without breaks is denied and it is stated that the petitioner was paid only wages for a month and that he was not appointed against a clear vacancy reserved for Scheduled Caste and Physically Handicapped category as there was no sanctioned post of day watchman-cum-attender. It is stated that G.O.Ms.No.212 dated 22.4.1994 was issued for regularization of services and since the petitioner did not fulfil the conditions stipulated therein, he was not entitled to seek regularization of his services. With regards W.P.No.10651 of 1996, it is stated that the petitioners therein were appointed as Works Inspectors against backlog vacancies of Scheduled Castes and Scheduled Tribes, unlike in present case. According to the respondents, the petitioner was appointed on temporary basis on consolidated pay and, as such, was not entitled to have his services regularized.

It is necessary to note that the proceedings of the Collector, Housing dated 26.9.1992, would show that the petitioner was appointed on his name being sponsored by the employment

exchange. On a query from this court as to how such an appointment could have been made in the absence of any vacancy in the post, Sri P. Udaya Bhaskara Rao, learned Standing Counsel for the respondents, while admitting that a copy of the said appointment order dated 26.9.1992 was available in the file, would submit that the requisition to the employment exchange is not traceable despite best efforts. It defies reason as to how the respondents had invited applications from the employment exchange for appointment to posts which were not available or which had not been sanctioned. It must, therefore, be held that a regular vacancy was available for the post of the attender/works inspector in the respondent-Corporation and that, on the petitioner's name being sponsored by the employment exchange, he was appointed to the said post. It is not even the case of the respondents that a temporary vacancy was available, wherein the petitioner was appointed. It is their case that there is no sanctioned post of day watchman-cum-attender. The submission of the learned Standing Counsel for the respondents that the scheme under G.O.Ms.No.212 dated 22.4.1994 does not apply, is of no consequence. G.O.Ms.No.212 is a scheme for regularization. Regularization of services of an employee would arise only when the appointment is irregular and in the present case since the petitioner's appointment was itself on a regular

basis, on his name being sponsored by the employment exchange, he must be held to have been appointed in a regular vacancy by the respondent-Corporation. His non-fulfilment of the conditions stipulated in G.O.Ms.No.212 dated 22.4.1994 is, therefore, of no consequence.

It is not in dispute that the method of appointment to the post of attender-cum-work inspector is on the basis of applications being invited from the employment exchange. Admittedly since the petitioner's name was sponsored by the employment exchange pursuant to the requisition made by the respondents in this regard, it must be held that the petitioner had, indeed, been appointed on a regular basis. Having been appointed on a regular basis, the action of the respondents in denying the petitioner regular scales of pay is patently illegal.

There shall, therefore, be a direction to the respondents to pay regular scale of pay to the petitioner as applicable to the post to which he had been appointed on a regular basis. The petitioner shall be entitled for payment of differential salary from the date of filing of the writ petition and not prior thereto. The entire exercise in this regard shall be completed within 4 months from the date of receipt of a copy of this order.

The writ petition is allowed. No order as to costs.

RAMESH RANGANATHAN, J

DATE: 26.2.2007

CVM